TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 140.

JAMES J. RAFFERTY, COLLECTOR OF INTERNAL REVENUE FOR THE PHILIPPINE ISLANDS, PETITIONER,

vs.

COMPANIA GENERAL DE TABACOS DE FILIPINAS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

PETITION FOR CERTIORARI FILED SEPTEMBER 16, 1920.

CERTIORARI AND RETURN FILED MARCH 9, 1921.

(27,905)

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1 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands (Appellate Jurisdiction).

G. R. No. 13889.

COMPANIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

versus

JAMES J. RAFFERTY, as Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

For Refund of Amount Paid for Taxes.

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case, to wit:

On January 24, 1917, the plaintiff by its attorneys filed with the office of the Clerk of the Court of First Instance of Manila, Ninth Judicial District, the following complaint:

2 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

(Case No. 14759.)

COMPANIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff,

versus

JAMES J. RAFFERTY, as Collector of Internal Revenue for the Philippine Islands, Defendant.

For its first cause of action, plaintiff avers:

I.

Plaintiff is a foreign corporation organized and existing under and by virtue of the laws of the Kingdom of Spain, duly licensed to do business in the Philippine Islands and maintaining its principal office therein in the City of Manila.

II.

Defendant is, and at all the times hereinafter mentioned has been, the duly appointed and qualified Collector of Internal Revenue for the Philippine Islands, and is a resident of the City of Manila.

3

III.

Plaintiff is, and at all the times herein mentioned has been, engaged in business in the Philippine Islands as a general merchant and as an exporter of Philippine products.

IV.

Between the first day of January, 1916, and the 31st day of March of the same year, plaintiff exported from the Philippine Islands merchandise, the growth and product of the Philippine Islands, of the value of ₱389,629.77.

V.

The said merchandise was at the time of its exportation from the Philippine Islands, during the course of the transportation thereof, and at the time of its arrival at the various ports of destination, the sole and exclusive property of plaintiff, and continued to be the property of plaintiff until sold by plaintiff to consumers in the countries to which said merchandise was exported.

VI.

Defendant herein, acting in his official capacity as Collector of Internal Revenue for the Philippine Islands, made demand upon plaintiff for the payment of a tax of 1% of the value of said merchandise so exported by plaintiff, to wit: the sum of ₱3,896.30,

4 and threatened to enforce payment of said demand by administrative distraint of plaintiff's property.

VII.

On the 18th day of April, 1916, the plaintiff herein, for the purpose of avoiding the distraint of its property, paid defendant, involuntarily and under written protest, the said sum of ₱3,896.30, so demanded by him, and notified the defendant that unless the said protested payment was promptly refunded, suit would be brought for the recovery of same with interest and costs.

VIII.

Defendant overruled plaintiff's protest and refused, and still refuses, to refund the said sum of ₱3,896.30, or any part thereof.

For its second cause of action, plaintiff avers:

I.

Plaintiff is a foreign corporation organized and existing under and by virute of the laws of the Kingdom of Spain, duly licensed

to do business in the Philippine Islands and maintaining its principal office therein in the City of Manila.

II.

5 Defendant is, and at all the times hereinafter mentioned has been, the duly appointed and qualified Collector of Internal Revenue for the Philippine Islands, and is a resident of the City of Manila.

III.

Plaintiff is, and at all the times herein mentioned has been, engaged in business in the Philippine Islands as a general merchant and as an exporter of Philippine products.

IV.

Between the first day of April, 1916, and the 30th day of June of the same year, plaintiff exported from the Philippine Islands merchandise, the growth and product of the Philippine Islands, of the value of ₱729,328.83.

V.

That said merchandise was at the time of its exportation from the Philippine Islands, during the course of the transportation thereof, and at the time of its arrival at the various ports of destination, the sole and exclusive property of plaintiff, and continued to be the property of plaintiff until sold by plaintiff to consumers in the countries to which said merchandise was exported.

VI.

6 Defendant herein, acting in his official capacity as Collector of Internal Revenue for the Philippine Islands, made demand upon plaintiff for the payment of a tax of 1% of the value of said merchandise so exported by plaintiff, to wit: the sum of ₱7,293.29, and threatened to enforce payment of said demand by administrative distraint of plaintiff's property.

VII.

On the 18th day of July, 1916, the plaintiff herein, for the purpose of avoiding the distraint of its property, paid defendant, involuntarily and under written protest, the said sum of ₱7,293.29, so demanded by him, and notified the defendant that unless the said protested payment was promptly refunded, suit would be brought for the recovery of same with interest and costs.

VIII.

Defendant overruled plaintiff's protest and refused, and still refuses, to refund the said sum of ₱7,293.29, or any part thereof.

For its third cause action, plaintiff avers:

I.

Plaintiff is a foreign corporation organized and existing under and by virtue of the lays of the Kingdom of Spain, duly licensed to do business in the Philippine Islands, and maintaining its principal office therein in the City of Manila.

7 II.

Defendant is, and at all the times hereinafter mentioned has been, the duly appointed and qualified Collector of Internal Revenue for the Philippine Islands, and is a resident of the City of Manila.

III.

Plaintiff is, and at all the times herein mentioned has been, engaged in business in the Philippine Islands, as a general merchant and as an exporter of Philippine products.

IV.

Between the first day of October, 1916, and the 31st day of December of the same year plaintiff exported from the Philippine Islands merchandise, the growth and product of the Philippine Islands, of the value of ₱1,736,554.00.

V.

That said merchandise was at the time of its exportation from the Philippine Islands, during the course of the transportation thereof, and at the time of its arrival at the various ports of destination, the sole and exclusive property of plaintiff, and continued to be the property of plaintiff, until sold by plaintiff to consumers in the countries to which said merchandise was exported.

8 VI.

Defendant herein, acting in his official capacity as Collector of Internal Revenue for the Philippine Islands, made demand upon plaintiff for the payment of a tax of 1% of the value of said merchandise so exported by plaintiff, to wit: the sum of ₱17,365.54, and threatened to enforce payment of said demand by administrative distraint of plaintiff's property.

VII.

On the 17th day of January, 1917, the plaintiff herein, for the purpose of avoiding the distraint of its property, paid defendant, involuntarily and under written protest, the said sum of ₱17,365.54, so demanded by him, and notified the defendant that unless the said

protested payment was promptly refunded, suit would be brought for the recovery of same with interest and costs.

VIII.

Defendant overruled plaintiff's protest and refused, and still refuses, to refund the said sum of ₱17,365.54, or any part thereof.

Wherefore, plaintiff prays for judgment against defendant upon the three causes of action herein set forth, in the aggregate sum of ₱28,555.13, together with interest at the legal rate on
9 each of the protested payments from the respective dates thereof until paid, and for the costs of suit.

Manila, P. I., January 23, 1917.

GILBERT, COHN & FISHER.
(Sgd.) F. C. FISHER, *p. p.*

On February 7, 1917, the Attorney General entered his appearance in the case as attorney for the defendant.

Thereafter, on February 12, 1917, the attorneys for both parties presented the following stipulation:

(Heading and Title Omitted.)

Stipulation.

Now come attorneys for plaintiff and defendant in the above-entitled cause and stipulate and agree that defendant may have a period of 60 days from date hereof in which to answer or demur to plaintiff's complaint filed herein.

Manila, February 12, 1917.

RAMÓN AVANCEÑA,
Attorney-General, for Defendant.
COHN & FISHER,
Attorneys for Plaintiff.

Thereafter, on April 18, 1917, the said Attorney-General, on behalf of the defendant, filed an answer to the complaint which reads as follows:

10 (Heading and Title Omitted.)

Answer.

Defendant, by the undersigned the Acting Attorney-General, in answer to plaintiff's complaint, alleges:

I.

That he admits the allegations contained in paragraphs I, II, III, VII and VIII of the first cause of action, and paragraphs I, II,

III, VII and VIII of the second cause of action, and paragraphs I, II, III, VII and VIII of the third cause of action of plaintiff's complaint.

II.

That he denies, all and singular, the other allegations contained in the said complaint, with the exceptions of those which in his special defense are expressly admitted.

III.

That as a special defense defendant alleges the following:

(*a*) That between the first day of January, 1916, and the 31st day of March of the same year, plaintiff consigned to its agents abroad merchandise, the growth and product of the Philippine Islands, of the value of ₱389,629.77.

(*b*) That the defendant made demand upon plaintiff for the payment of an internal revenue tax of one per centum of
11 the value of said merchandise consigned abroad as aforesaid.

(*c*) That thereafter, to wit, on the 18th day of April, 1916, plaintiff paid to defendant, under protest, the sum of ₱3,896.30 demanded of plaintiff as aforesaid.

(*d*) That the said protest was denied by defendant for the reason that the internal revenue tax so collected is legal.

(*e*) That between the first day of April, 1916, and the 30th day of June of the same year, plaintiff consigned to its agents abroad merchandise, the growth and product of the Philippine Islands, of the value of ₱44,928.00.

(*f*) That the defendant made demand upon plaintiff for the payment of an internal revenue tax of one per centum of the value of said merchandise consigned abroad as aforesaid.

(*g*) That thereafter, to wit, on the 18th day of July, 1916, plaintiff paid to defendant, under protest, the sum of ₱4,492.80 demanded of plaintiff as aforesaid.

(*h*) That the said protest was denied by defendant for the reason that the internal revenue tax so collected is legal.

12 (*i*) That between the first day of October, 1916, and the 31st day of December of the same year, plaintiff consigned to its agents abroad merchandise, the growth and product of the Philippine Islands, of the value of ₱1,736,554.00.

(*j*) That the defendant made demand upon plaintiff for the payment of an internal revenue tax of one per centum of the value of said merchandise consigned abroad as aforesaid.

(*k*) That thereafter, to wit, on the 17th of January, 1917, plaintiff paid to defendant, under protest, the sum of ₱17,365.54, demanded of plaintiff as aforesaid.

(*l*) That the said protest was denied by defendant for the reason that the internal revenue tax so collected is legal.

Wherefore, defendant asks the judgment of this Court that the plaintiff take nothing by its said complaint, and for the costs of this action.

Manila, P. I., April 14, 1917.

QUINTIN PAREDES,
Acting Attorney-General.

The case was set for hearing on July 12, 1917, and, on November 26, 1917, the Honorable James A. Ostrand, Judge of the Court of First Instance of Manila, Ninth Judicial District, entered judgment and decision in the case which reads as follows:

13 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

(Case No. 14759.)

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff,

versus

JAMES J. RAFFERTY, as Collector of Internal Revenue for the Philippine Islands, Defendant.

Decision.

The above-entitled actions are brought to recover back internal revenue taxes paid on export consignments during the year 1916, under Section 2 of Act 2541, Section 3 of Act 2622, and Section 1614 of the Administrative Code of 1916. The plaintiffs argue that it could not have been the intention of the legislature in enacting the statutory provisions cited to impose taxes on export consignments, and that, if such was the intention, the provisions are unconstitutional.

14 There is no dispute as to the fact that all the taxes in question were levied on consignments abroad. From January 1st to February 3rd, 1916, they were levied and collected under Section 2 of Act 2541, of which the pertinent part reads as follows:

"* * * a tax of one per cent on the grow value in money of the commodities, goods, wares and merchandise sold, bartered or exchanged by them, such tax to be based on the actual selling price or value at which the things in question are disposed of * * *"

From February 4th to June 30th, 1916, the taxes were imposed under Section 3 of Act 2622, which reads in part:

"* * * a tax of one per cent of the gross value in money of the commodities, goods, wares and merchandise sold, bartered, consigned, or exchanged by them, such tax to be based on the actual selling price or value at which the things in question are disposed of * * *"

On July 1, 1916, the Administrative Code of 1916, went into effect, and in which the following language is used:

"* * * a tax of one per cent on the gross value in money of the commodities, goods, wares, and merchandise sold, bartered, exchanged, or consigned abroad by them, such tax to be based on the actual selling price or value at which the things in question are disposed of or consigned * * *"

15 Act No. 2622 was expressly ratified and confirmed by the Act of Congress of July 1, 1916, and, on August 29, 1916, Congress passed the so-called Jones Act, Section 11 of which provides that no export duties shall be levied or collected in the Philippine Islands.

As will be seen, from the standpoint of legislation bearing upon the tax in question, the year 1916 may be divided into four periods, viz: (1) From January 1st to February 3rd, when the tax was collected under Section 2 of Act 2541; (2) from February 4th till June 30th, when Section 3 of Act 2622, ratified by the Act of Congress of July 1, 1916, was in force; (3) from July 1st to August 28th, when the tax was imposed under the Administrative Code; and (4) from August 29th to December 31st, when the matter was governed by the same Code as affected by the Act of Congress of August 29th.

(1) As to the first period there can be no doubt but that the tax on consignments was improperly collected. The terms "sold, bartered or exchanged" do not necessarily include consignments.

(2) The statute controlling during the second period expressly imposes the tax on consignments, but it applied to all consignments alike and was not limited to export consignments. The
16 tax could, therefore, not be considered an export tax; it was not "laid upon the commodities as exports, or because of their exportation or intended exportation or upon persons who actually exported such commodities" (Muñoz & Co. vs. Hord, 12 Phil. Rep. at page 630). In the opinion of the Court it was clearly within the power of the Legislature to lay the tax provided for in Act 2622, and the terms of the Statute itself are too clear to require construction. The tax being valid, the plaintiffs can not, of course, recover back the amounts paid under said Act.

(3) There can be no doubt that the language used in the Administrative Code converts the tax into an export tax pure and simple. It is laid on consignments abroad, merely, and does not include domestic consignments.

As to the power of the local Legislature to provide for such a tax, there may be some doubt. The plaintiffs argue that, as the legislative powers delegated to the Philippine Government did not extend beyond the scope of the powers confirmed upon the Philippine Commission by the President's Instructions of April 7, 1900 (see Section 1 of Act of Congress of July 1, 1902), and that as it has been repeatedly held by the Supreme Court of the United States that the President, at the time of the issuance of the instructions, had no power to authorize the Commission to enact tariff laws,
17 neither the Philippine Commission nor the Philippine Legislature have ever possessed such authority.

It may be observed, however, that, while the United States Supreme Court, in a series of cases following the Fourteen Diamond Rings Case, 183 U. S., 176, held that the presidential power to levy duties on goods brought from the United States to the Philippine Islands ceased upon the exchange of ratifications of the Treaty of Peace with Spain, April 11, 1899, it has never held that the President did not have power to authorize any sort of tariff legislation after that date. The decision in the Fourteen Diamond Rings Case is based on the theory that the Philippine Islands ceased to be foreign territory after the ratification of the Treaty of Peace, and that the President, as commander in chief of our military forces, could not impose duties on imports from the United States to one of its own territories. The same reasoning would not apply to imports from foreign countries, and may not necessarily be applicable to taxes on exports to any country.

Taking into consideration the rule that statutes should not be held unconstitutional in merely doubtful cases, the undersigned is of the opinion that, until the enactment of the Jones Act, the clause of the Administrative Code, imposing a tax, on consignments
18 abroad, was constitutional and valid.

(4) Act of Congress of August 29, 1916 (the Jones Act), prohibits the levy and collection of taxes on exports from the Philippine Islands. The tax on consignment provided for in the Administrative Code, being as above stated an export tax, falls within the prohibition.

Wherefore, it is hereby ordered and adjudged that the defendant the Collector of Internal Revenue for the Philippine Islands return to the plaintiffs the amounts paid by them, respectively, as taxes on consignments imposed during the periods from January 1, 1916 till February 3, 1916, inclusive, and from August 29, 1916 till December 31, 1916, inclusive, and the return of which is demanded in the present action. No costs will be allowed.

Manila, P. I., November 26, 1917.

JAMES A. OSTRAND,
Judge.

On December 3, 1917, the counsel for the plaintiff presented an exception to the decision and motion for rehearing reading as follows:

(Heading and Title Omitted.)

Now comes the plaintiff in the above-entitled cause and respectfully excepts to the decision of this Court, dated the 26th day of November, 1917, to so much of said decision and judgment as declares legal and valid the taxes levied and collected upon merchandise exported by the plaintiff from the Philippine Islands during the prevalence of Act No. 2622 and Act No. 3657, and to so much thereof as denies to plaintiff the right to recover interest and costs of suit, and moves this Honorable Court to set aside the judgment rendered herein and grant a new trial of said action for the following reasons:

1. The evidence presented is insufficient to justify the decision.

2. That the decision is contrary to the law.

Manila, P. I., December 1, 1917.

CHARLES C. COHN,
Attorney for Plaintiff.

On December 7, 1917, the Acting Attorney-General, on behalf of the defendant, filed also the following exception to the decision and motion for rehearing:

(Heading and Title Omitted.)

Now comes the defendant in the above-entitled cause and respectfully excepts to the decision of this Court, dated the 26th day of November, 1917, to so much of said decision and judgment as declares that the amounts paid by the plaintiff as taxes on consignments imposed during the periods from January 1, 1916 till February 3, 1916, inclusive, and from August 29, 1916 till December 31, 1916, inclusive, have been illegally collected, and to so much thereof as orders the return of said amounts to the plaintiff; and moves this Honorable Court to set aside the judgment rendered herein and grant a new trial of said action for the following reasons:

1. The evidence presented is insufficient to justify the decision.

2. That the decision is contrary to the law.

Manila, P. I., December 6, 1917.

QUINTIN PAREDES,
Acting Attorney-General, for the Defendant.

Thereafter, on December 22, 1917, the foregoing motions for rehearing filed by both parties were denied by the trial court; to the order denying the said motions for rehearing both plaintiff and defendant excepted forthwith and gave notice of their intention to prepare and file a bill of exceptions, as follows:

(Heading and Title Omitted.)

Now comes the plaintiff in the above-entitled action and excepts to the order of this Court dated December 22nd, 1917, denying the motion for new trial filed by the plaintiff, and does
21 hereby give notice of its intention to prosecute a bill of exceptions for a review by the Supreme Court.

Manila, P. I., December 27, 1917.

CHARLES C. COHN,
Attorney for Plaintiff.

(Heading and Title Omitted.)

Now comes the defendant in the above-entitled action and excepts to the order of this Court dated December 22nd, 1917, denying the motion for new trial filed by the defendant, and does hereby give notice of his intention to prosecute a bill of exceptions for a review by the Supreme Court.

Manila, January 4, 1918.

QUINTÍN PAREDES,
Solicitor-General, for the Defendant.

Thereafter, on January 17, 1918, the counsel for both parties presented a stipulation in which they agreed, subject to the approval of the trial court, that the bill of exceptions heretofore to be filed by the plaintiff may likewise be considered as filed by the defendant.

22 On the same date, to wit, January 17, 1918, and within the time limited by law, the plaintiff and the defendant by their respective attorneys filed with the Court of First Instance the bill of exceptions requesting that the same be approved and certified, and forwarded thereafter to the Clerk of the Supreme Court of the Philippine Islands, together with all evidence given at the hearing of the case, which said evidence is thereby incorporated by reference into said bill of exceptions, so that the error complained of may be considered by the Supreme Court.

On January 30, 1918, the Court of First Instance approved, signed, and certified the said bill of exceptions, and the same, on March 23, 1918, was transmitted to the office of the Clerk of the Supreme Court of the Philippine Islands, together with the record of the case, for the purposes of the appeal.

On March 27, 1918, the case was duly docketed, on appeal, bearing No. 13889 of the General Register of the Supreme Court.

Thereafter, on April 4, 1918, the bill of exceptions was printed and filed.

On May 14, 1918, the plaintiff and appellant, through its attorney, filed its brief in the case assigning the following errors:

Specification of Errors.

23 Error No. 1. The trial court erred in denying unto plaintiff the refund of taxes paid on consigments abroad under Section 3 of Act No. 2622 from February 4 to June 30, 1916.

Error No. 2. The trial court erred in denying unto plaintiff the refund of taxes paid on consignments abroad under the Administrative Code of 1916 from July 1, 1916, to August 29, 1916.

Error No. 3. The trial court erred in refusing and declining to render a final and complete judgment capable of enforcement by execution.

Error No. 4. The trial court erred in denying to plaintiff the recovery of interest as compensation for the deprivation of moneys unlawfully exacted, and to recovery of costs.

Error No. 5. The trial court erred in denying the plaintiff's motion for a new trial.

On June 14, 1918, the Solicitor-General, on behalf of the defendant and appellant, filed also his brief in the case assigning the following errors:

Specification of Errors.

Error No. 1. The trial court erred in holding that the tax on consignments here involved was improperly collected during the period from January 1 to February 3, 1916.

Error No. 2. The trial court erred in holding that the tax on consignments provided for in the Administrative Code falls within the prohibition of the Act of Congress of August 29, 1916 (The Jones Law).

24 On August 1, 1920, the plaintiff and appellant, through its attorney, filed in the case its brief as appellee.

On November 13, 1918, the case was finally submitted to the Supreme Court, for decision on the merits.

Thereafter, on February 18, 1920, the Supreme Court of the Philippine Islands rendered its decision in the case, which said decision is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

In Banc.

G. R. No. 13889.

Submitted November 13, 1918.

Promulgated February 18, 1920.

Justices present: The Chief Justice, Cayetano S. Arellano and Messrs. Florentino Torres, E. Finley Johnson, Manuel Araullo, Thos. A. Street, Geo. A. Malcolm, and Ramón Avanceña.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

versus

JAMES J. RAFFERTY, As Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

25 *Decision.*

JOHNSON, *J.*:

The purpose of this action was to recover an export tax, paid under protest, on certain merchandise, the growth and product of the Philippine Islands, exported from the Philippine Islands to various persons and firms without the Philippine Islands, for the following periods:

(1) From January 1, 1916, to March 31, 1916, amounting to ₱3,896.30;

(2) From April 1, 1916, to June 30, 1916, amounting to ₱7,293.29; and

(3) From October 1, 1916, to December 31, 1916, amounting to ₱17,365.54.

There is no dispute about the facts. They are admitted. After hearing the respective parties the Hon. James A. Ostrand, in a carefully prepared opinion, rendered a judgment in favor of the plaintiff and against the defendants, ordering a return of said export tax which had been paid, covering the following periods: (*a*) from January 1, 1916, to February 3, 1916, and (*b*) from October 1, 1916, to December 1, 1916. From that judgment both plaintiff and defendant appealed.

26 The export taxes collected by the defendant for the said periods (1) and (2) above, covering the period from January

1, 1916, to June 30, 1916, were collected under and by virtue of the provisions of section 2 of Act No. 2541 and section 3 of Act No. 2622. The contention of the plaintiff-appellant is, that inasmuch as said sections of said laws provide for an export tax upon merchandise, the product and growth of the Philippine Islands, they are illegal. That contention would be tenable (Macleon & Co., Inc. vs. Collector of Internal Revenue, R. G. No. 744; Crew Levick Co. vs. Pennsylvania, 245 U. S., 292; 256 Pa. St., 508; Smith, Bell & Co., Ltd. vs. Rafferty, R. G. No. 14466) except for the fact that said Acts were expressly ratified by an Act of Congress of the first of July, 1916 (39 Stat. at Large 286).

Said Act of Congress provides: "That the Internal Revenue taxes imposed by the Philippine Legislature under the law enacted by that body on December 21, 1915 (Act No. 2541) as amended by the law enacted by that body on February 4, 1916 (Act No. 2622), * * * are hereby legalized, and ratified and the collection of all such taxes heretofore or hereafter is hereby legalized, ratified and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed."

27 The Congress of the United States, therefore, having "legalized, ratified and confirmed" said Acts (2541 and 2622) so far as they affect the question before us, all collections of export tax made under and by virtue of said laws for the period of January 1, 1916, to June 30, 1916, are legal and the same cannot be recovered.

The collections for the periods (3) above mentioned, covering the period from October 1, 1916, to December 31, 1916, being an export tax, are expressly prohibited by the Act of Congress of August 29, 1916 (the Jones Law). (See Section 11 of Act of Congress of August 29, 1916, Vol. 12 Pub. Laws, p. 237.)

The export tax collected for the period from October 1, 1916, to December 31, 1916, being prohibited by said Act of Congress, the same was illegally collected and should be returned to the plaintiff, together with interest at the legal rate from the date of payment, the 17th day of January, 1917.

The error which the lower court fell into in ordering the return of the taxes collected for the period of January 1, 1916, to February 3, 1916, was due to an evident oversight of the fact that the Act of Congress above referred to of July, 1916 (39 Stat. at large, 286) expressly ratified Act No. 2541, of December 31, 1915, as well as Act No. 2622, of February 4, 1916.

28 In this connection we deem it important to note that the following Acts of the Philippine Legislature provided for an export tax upon merchandise, the produce of the Philippine Islands which was consigned or sold abroad:

(*a*) Section 2 of Act No. 2541;
(*b*) Section 3 of Act No. 2622;
(*c*) Section 1614 of Act No. 2657; and
(*d*) Section 1459 of Act No. 2711.

Section 2 of Act No. 2541 and Section 3 of Act No. 2622 were in force from the 1st day of January, 1916, to 30th day of June, 1916. Section 1614 of Act No. 2657, which took effect on the 1st day of July, 1916, was abrogated not only by the Jones Law, of August 29, 1916, but by section 1459 of Act No. 2711, which took effect on the 1st day of October, 1917.

Said Acts Nos. 2541 and 2622 were expressly ratified, legalized and confirmed by an Act of Congress of July 1, 1916. Section 1459 of Act No. 2711, which took effect October 1, 1917, was expressly ratified, legalized and confirmed by an Act of Congress of June 4, 1918.

Therefore, all export taxes collected prior to the 1st day of July, 1916, and all taxes collected after the 1st day of October, 1917, have been expressly legalized by said Acts of Congress, and any collections made upon exports during said periods cannot be recovered. The only period, therefore, during which the collection of the export tax was illegal was that from July 1, 1916, to September 30, 1917.

For the foregoing reasons the judgment of the lower court is hereby modified, and it is hereby ordered and decreed that judgment be rendered in favor of the plaintiff and against the defendant for the sum of ₱17,365.54, together with interest at 6% from the 17th day of January, 1917, until paid; without any finding as to costs.

Ten days after notification of decision let judgment be entered in conformity herewith, and, five days thereafter, let the record be returned to the court of origin for proper proceedings.

It is so ordered.

Arellano, Ch. J., and Torres, Araullo, Street, and Malcolm, JJ., concur.

On February 19, 1920, the parties were duly notified of the foregoing decision, and, on February 27 of the same year, the Attorney-General, on behalf of the defendant and appellant, filed the following motion for rehearing:

(Heading and Title Omitted.)

Motion for Rehearing.

Now comes the Attorney-General, on behalf of the defendant-appellant, and moves for a rehearing in the above-entitled action and for a reconsideration of the decision therein rendered by this Court, in so far as the said decision holds:

1. That the taxes collected on goods consigned abroad by plaintiff during the period from July 1, 1916, to September 30, 1917, are illegal and that they have not been ratified and validated by the Act of Congress of July 4, 1918.

2. That the defendant should pay interest on the amount of said taxes.

In support of this motion, we here reiterate the arguments on identical points contained in our motion for reconsideration in the

case of Smith, Bell & Co., Ltd. vs. James J. Rafferty, etc., R. G. No. 14466, to which the attention of the Court is respectfully invited.

Manila, February 27, 1920.

QUINTÍN PAREDES,
Attorney-General.

On March 11, 1920, the Supreme Court, upon considering the foregoing motion for rehearing passed a resolution denying the same.

Thereafter, on March 16, 1920, the Clerk of the Supreme Court of the Philippine Islands entered the final judgment in the case which reads as follows:

31 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

(G. R. No. 13889.—March 16, 1920.)

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

versus

JAMES J. RAFFERTY, As Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

Judgment.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the eighteenth day of February, A. D. nineteen hundred and twenty;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the twenty-sixth day of November, nineteen hundred and seventeen, and from which the above-entitled appeal was taken, be, and the same is hereby, modified, and it is hereby ordered and decreed that a judgment be rendered in favor of the plaintiff and against the defend-
32 ant for the sum of ₱17,365.54 together with interest at 6% from the 17th day of January, 1917, until paid, without any finding as to costs.

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

Certified correct:

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

Thereafter, on March 18, 1920, the Attorney-General, on behalf of the defendant and appellant, filed the following petition:

(Heading and Title Omitted.)

Comes now the Attorney-General on behalf of the defendant and appellant and excepts to the decision of this court in denying his motion for a rehearing in the above-entitled action, and also excepts to the final judgment entered herein.

Notice is hereby given that the defendant intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this court, and said defendant hereby makes application for the retention of the
33 record in said case in this court pending the preparation, printing and certification of said record and the presentation of said petition to the Supreme Court of the United States. The said defendant also prays for a stay of the judgment of this court during the pendency of the application for the writ of certiorari and of the proceedings in the Supreme Court of the United States.

Manila, March 16, 1920.

QUINTÍN PAREDES,
Attorney-General, Attorney for Defendant and Appellant.

And finally, on March 19, 1920, the Supreme Court, upon considering the above petition filed by the Attorney-General, on behalf of the defendant and appellant, passed a resolution ordering that the record of the case be retained in the office of the Clerk of said Court for a period of six months.

34 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing thirty-three (33) printed pages contain a true and correct translation and transcript of the record of the case entitled Compañía General de Tabacos de Filipinas, Plaintiff and Appellant, versus James J. Rafferty, as Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant, for refund of amount paid for taxes, bearing No. 13889 of the docket of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 26th day of July, A. D. nineteen hundred and twenty.

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT.
Clerk of the Supreme Court of the Philippine Islands.

35 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, in obedience to the writ of certiorari issued by the Supreme Court of the United States, dated the 18th day of November, 1920, in Cause No. 548 entitled James J. Rafferty, as Collector of Internal Revenue for the Philippine Islands, vs. Compania General de Tabacos de Filipinas, do hereby make return thereof to said Court, in accordance with the terms of the stipulation filed in said cause by the attorneys of record of the respective parties, the original of which stipulation is hereto attached, this eighteenth day of January in the year of our Lord one thousand nine hundred and twenty-one.

[Seal of the Supreme Court of the Philippine Islands.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

36 In the Supreme Court of the United States, October Term, 1920.

No. 548.

COMPANIA GENERAL DE TABACOS DE FILIPANAS, Plaintiff and Appellant,

v.

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

Stipulation that Return May Consist of Copy of Record on File.

It is hereby stipulated that the certified copy of the record of this case on application by defendant above named for writ of certiorari, certified July 26, 1920, by the Clerk of the Supreme Court of the Philippine Islands (the case being No. 13,889 in that court), which has been filed in the office of the Clerk of the Supreme Court of the United States, may be taken and deemed the return required by the writ of certiorari granted in the cause by the Supreme Court of the United States under date of November 18, 1920.

Dated Washington, D. C., November 22, 1920.

CLARENCE B. MILLER,
Attorney for Plaintiff-Appellee.

CHARLES MARVIN,
Attorney for Defendant-Appellant.

37 In the Supreme Court of the United States, October Term, 1920.

No. 548.

COMPANIA GENERAL DE TABACOS DE FILIPANAS, Plaintiff and Appellant,

v.

JAMES J. RAFFERTY, Collector of Internal Revenue for the Philippine Islands, Defendant and Appellant.

Stipulation that Return May Consist of Copy of Record on File.

It is hereby stipulated that the certified copy of the record of this case on application by defendant above named for writ of certiorari, certified July 26, 1920, by the Clerk of the Supreme Court of the Philippine Islands (the case being No. 13,889 in that court), which has been filed in the office of the Clerk of the Supreme Court of the United States, may be taken and deemed the return required by the writ of certiorari granted in the cause by the Supreme Court of the United States under date of November 18, 1920.

Dated Washington, D. C., November 22, 1920.

CLARENCE B. MILLER,
Attorney for Plaintiff-Appellee.
CHARLES MARVIN,
Attorney for Defendant-Appellant.

38 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the Philippine Islands, Greeting:

Being informed that there is now pending before you a suit in which Compania General de Tabacos de Filipinas is plaintiff and appellant, and James J. Rafferty, as Collector of Internal Revenue for the Philippine Islands, is defendant and appellant, which suit was removed into the said Supreme Court by virtue of appeals from the Court of First Instance of Manila, Ninth Judicial District and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, do hereby command you that you send without delay

39 to the said Supreme Court, as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the

United States, the eighteenth day of November in the year of our Lord one thousand nine hundered and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

40 [Endorsed:] File No. 27,905. Supreme Court of the United States, October Term, 1920. No. 548. James J. Rafferty, as Collector of Internal Revenue for the Philippine Islands, vs. Compania General de Tabacos de Filipinas. Writ of Certiorari.

41 [Endorsed:] File No. 27,905. Supreme Court U. S. October Term, 1920. Term No. 548. James J. Rafferty, as Collector etc., Petitioner, vs. Compania General de Tabacos de Filipinas. Writ of certiorari and return. Filed March 9, 1921.